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CHARLES ELMORE

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 504.

THE UNITED STATES,

Petitioner,

vs.

DOUGLAS CLYDE MACINTOSH,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The District Court filed no opinion; it did, however, enter a final decree stating therein its reasons for denying the application of the respondent for citizenship (R. 26-27). The opinion of the Circuit Court of Appeals (R. 40-44) has not yet been reported.

Jurisdiction.

The judgment sought to be reviewed was entered on July 7, 1930 (R. 45). On October 7, 1930, the petitioner filed a

petition for writ of certiorari and brief in support thereof in this Court, invoking its jurisdiction under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938, U. S. C., Title 28, Sec. 347.

Question Presented.

This is a proceeding for naturalization. Respondent, a Canadian citizen, was denied citizenship by the United States District Court for the District of Connecticut. The sole ground for questioning his right to be admitted is thus set forth in the decree of the District Court (R. 27):

> "It appearing that the said Petitioner, considering his allegiance to be first to the will of God, would not promise in advance to bear arms in defense of the United States under all circumstances but only if he believed the war to be morally justified, it is
>
> Decreed, that the Petitioner is not attached to the principles of the Constitution of the United States and further decreed that said petition for citizenship is denied."

The Circuit Court of Appeals held this conclusion of the District Court to be erroneous, and reversed its decree, directing that the respondent be admitted to citizenship. The sole question presented is whether the respondent's refusal to make the unqualified promise required by the District Court peremptorily requires the denial of his application.

Statement of the Case.

The respondent, born on February 18, 1877, at Breadalbane, Ontario, Canada, first entered the United States in 1904 to become a graduate student at the University of Chicago (R. 1 and 4). While in this country in 1907, he was ordained as a Baptist minister (R. 14). After returning to Canada for two years, in 1909 he came to Yale University to teach

in its Divinity School, where he is now a member of the Faculty, Chaplain of the Yale Graduate School, and Dwight Professor of Theology (R. 14). In the spring of 1916 he voluntarily enlisted as a chaplain in the Canadian Army and went overseas, where he saw service at the front in the neighborhood of Vimy Ridge and in the battle of the Somme (R. 15). He returned to America late in the year 1916, and during the succeeding year made many public addresses in support of the Western Allies (R. 16). Joining the American Y. M .C. A., he again went to France in the spring of 1918, where he had charge of a Y. M. C. A. hut in the St. Mihiel region of the front until the Armistice was declared (R. 16).

On February 18, 1925, the respondent filed in the District Court of the United States at New Haven, Connecticut, a declaration of his intention to become a citizen (R. 1). On March 18, 1929, he filed in the same Court a preliminary form for petition for naturalization accompanied by the certificate of arrival issued by the Department of Labor (R. 2), and a petition for naturalization accompanied by the proper affidavits of witnesses (R. 7). In the preliminary form for petition for naturalization he signified his willingness to take the usual oath to support and defend the Constitution of the United States; but in answer to question 22 of that form, asking him whether he was willing to take up arms in defense of this country, he stated: "Yes, but I should want to be free to judge of the necessity" (R. 5).

On June 10, 1929, the respondent was given a preliminary hearing before the naturalization examiner. At this hearing he submitted a memorandum explaining more fully his answers to certain questions in the preliminary form, including his answer to question 22, above quoted (R. 11). In it he stated:

> "I am *not* willing to promise beforehand, and without knowing the cause for which my country may go to war, either that I will or that I will not 'take up arms in

defence of this country,' however 'necessary' the war may seem to be to the government of the day" (R. 11).

As a consequence the naturalization examiner recommended that the petition be denied, giving as his reason "attachment to the principles of the Constitution not shown" (R. 25).

On June 24, 1929 he appeared before the Judge of the District Court. Since there was no stenographic record of the proceedings, counsel for the Government and for the respondent prepared a statement of the facts which were substantially presented to the Court at that hearing (R. 14). The respondent submitted to the Court a memorandum summarizing his war record (R. 12) and an excerpt from "Who's Who in America" (R. 13).

It was not until this final hearing before the District Court that the respondent explained his position in detail. There it appeared in response to a question asked him by the Judge, that his attitude was based upon religious convictions (R. 20). Without equivocation he stated to the Judge:

> "* * * that he was ready to give to the United States, in return for citizenship, all the allegiance he ever had given or ever could give to any country, but that he could not put allegiance to the government of any country before allegiance to the will of God" (R. 20).

The respondent was willing and believed he could take the oath of allegiance without any alteration or qualification (R. 5 and 19). He stated unequivocally that he was not a pacifist, and that he believed in the use of armed force "in the exercise of police functions in national or international relations, and that there were circumstances under which such force could also be justifiably used, for instance, to repel invasion, or even to defend a weaker nation" (R. 23). He merely desired to explain to the Court that in some particular future war (that is, one which he believed to be

unjust and contrary to Christian principles), he might have conscientious religious scruples against bearing arms; and that he could not therefore give a blanket promise in advance to bear arms in any and all wars in which this country might engage. In the words of the Circuit Court of Appeals, he "wishes to keep pure his religious scruples" (R. 44).

This attitude of the respondent, the District Court believed, compelled it to deny the petition for naturalization (R. 26). The Circuit Court of Appeals took the opposite view.

Summary of Argument.

I. The decision of the Circuit Court of Appeals is not in conflict with that of this Court in *United States* v. *Schwimmer*, 279 U. S. 644.

II. In its ultimate analysis the sole issue is whether the respondent, in order to satisfy the requirements of the Naturalization Act, must promise in advance to bear arms in any and all future wars, even against his conscientious religious scruples.

III. Congress has never provided that an alien must be willing, as a condition of naturalization, to make such a promise in violation of his conscientious religious scruples.

IV. The Constitution and laws of the United States do not require that citizens with conscientious religious scruples should bear arms.

V. A promise to forego a privilege enjoyed by a native born citizen under the Constitution and laws of the United States cannot be exacted of an alien as a condition of his naturalization.

POINT I.

The decision of the Circuit Court of Appeals is not in conflict with that of this Court in *United States* v. *Schwimmer*, 279 U. S. 644.

A comparison of this respondent's petition for naturalization with that of Rosika Schwimmer discloses that the attitude, beliefs and opinions of the respondent differ completely and radically from those of Rosika Schwimmer. In no essential respect are they similar.

In fact the Government itself anticipated the fundamental difference between the two cases when it stated in its brief presented to this Court in *United States* v. *Schwimmer* that *"refusal to perform military service on account of religious scruples is not involved in this case"* (Government's Brief in No. 484, October Term, 1928, at p. 17). The respondent's primary desire was the protection of his right not to bear arms in a war which his conscience, dictated by the will of God, might consider to be morally unjustified. Therein lies the formula for the proper understanding of his answers and statements. In brief, his attitude is that of every intelligent Christian man or woman.

The second outstanding difference between the two cases is this: Rosika Schwimmer declared that she had "no sense of nationalism," "no nationalistic feeling," and "only a cosmic consciousness of belonging to the human family" (279 U. S. at page 648). This respondent, on the other hand:

> "stated further that he was willing to give to the United States, in return for citizenship, all the allegiance he ever had given or ever could give to any country, but that he could not put allegiance to the government of any country before allegiance to the will of God. The applicant explained that if he were to be a citizen of the United States he would recognize special duties and

> obligations by virtue of that citizenship over and above his general duty to humanity as such. The applicant believed that the international outlook he advocated would not mean the doing away of nationalism" (R. 20).

We submit that no Christian of any denomination could promise more.

Again, Rosika Schwimmer declared that she "was willing to do everything that an American citizen has to do except fighting", and "I am not willing to bear arms" (279 U. S. at page 648). Dr. Macintosh, on the other hand voluntarily enlisted in the Canadian Army and subsequently in the American Army during the World War, and has shown, by deeds as well as by words, his willingness to defend our Government by force of arms. To question 22 of the preliminary form for naturalization, reading: "If necessary, are you willing to take up arms in defense of this country?", Dr. Macintosh answered affirmatively (R. 5). Rosika Schwimmer answered this same question as follows: "I would not take up arms personally" (279 U. S. at page 647).

And there is still another basic difference between the two cases. Rosika Schwimmer stated that she was "an uncompromising pacifist" (279 U. S. at page 648). This record, on the other hand, shows that

> "while devoted to the cause of peace, the applicant stated that he was not a pacifist in the ordinary sense of that term, because it did not seem to him that Christian principles required absolute pacifism on the part of all. * * * The applicant declared that he believed that there was a rightful place for the use of force by the army and navy in the exercise of police functions in national or international relations and that there were circumstances under which such force could also be justifiably used, for instance, to repel invasion, or even to defend a weaker nation. Since it would be neither wise nor right for the nation to adopt absolute and unconditional pacifism, the applicant did not believe any moral necessity rested upon him to adopt an unconditionally pacifist position" (R. 22-23).

In the light of these views we submit that there is no ground upon which this Court can reach the conclusion which it reached in *United States* v. *Schwimmer*, that the respondent "may be opposed to the use of military force as contemplated by our Constitution and laws" (279 U. S. at page 652).

The respondent, moreover, considers that a Christian citizen must decide for himself whether according to his conscience he would be morally justified in killing others in a particular war. He recognizes that two Christians may well reach different conclusions. Hence, although he might believe *he* would be violating the will of God in bearing arms in a particular war, he does not anticipate engaging "in any propaganda against the prosecution of a war which the Government had already declared and which it considered to be justified" (R. 21), or in altering the opinion of others. Even during a war which he might regard as unjustified, he stated that he would still regard himself as under moral obligation not to do anything that would injure his country (R. 20). His attitude is unquestionably that of a righteous, peace-loving, law-abiding member of society.

As a matter of fact, we submit that the respondent fully satisfies the test enunciated by this Court in *United States* v. *Schwimmer*. The core of that decision is that the applicant had failed to support the burden resting upon her to show that her uncompromising pacifism, her lack of nationalistic feeling, and her "cosmic sense of belonging to the human family" did not oppose "the principle that it is the duty of citizenship by force of arms when necessary to defend the country against all enemies" (279 U. S. at p. 653). If such is the test the respondent has met it; for he not only recognizes but favors that principle, and has proved his adherence to it by his acts. In no way did this Court intimate that an applicant for citizenship must without qualification declare his belief in the doctrine "My country right or

wrong", or that he must agree in advance to take up arms and fight in any and every war that may ever be declared, even if it violates his honest conscientious religious scruples.

POINT II:

In its ultimate analysis the sole issue is whether the respondent, in order to satisfy the requirements of the Naturalization Act, must promise in advance to bear arms in any and all future wars even against his conscientious religious scruples.

The Government in its brief (pp. 16-17) points out, as this Court said in *United States* v. *Schwimmer*, that if doubt remains in the mind of the Court as to any essential matter of fact, the United States is entitled to the benefit of such doubt and the application for citizenship should be denied. We submit, however, that on the record of the petition for naturalization before this Court there is no room for doubt as to any "essential matter of fact". The sole issue is one of law.

The respondent did not refuse to take the oath of allegiance prescribed by the Naturalization Act and the regulations of the Department of Labor. He did not ask to alter its form nor did he think it necessary. In the preliminary form for petition for naturalization the respondent answered question 20 in the affirmative and without qualification (R. 5). The memorandum submitted by him (R. 11) contains no indication of a refusal to take the oath of allegiance in its present form. An examination of this memorandum discloses that its real and sole purpose was the clarification of his views on the bearing of arms. At the hearing before the District Court the respondent again stated that he would take the oath of allegiance (R. 19).

The Government now offers, as a reason for granting a writ of certiorari, the argument that the decision of the Circuit Court of Appeals authorizes admission to citizenship upon a declaration of conditional or qualified acceptance of the oath (Petition, p. 8). Similarly in its brief the Government contends that the respondent "qualified" his acceptance of the oath of allegiance (Brief, pp. 11 and 12). But since he respondent, unlike the petitioner in the *Clarke* case (Government's Brief, p. 17), did not request any verbal alteration or qualification of the oath of allegiance, obviously the only possible method by which he can be said to have "qualified" the oath was by his statement that he could not promise in advance to bear arms in an unjust war against his conscientious religious scruples. Hence, if the Constitution and laws of the United States do not in fact demand such a promise, there is no qualification.

The naturalization examiner in his recommendation (R. 24) and the Judge of the District Court (R. 26) have held that "attachment to the principles of the Constitution" requires that an alien give such a promise. The Circuit Court of Appeals, however, held that there is no "fixed principle of the Constitution of this country requiring a citizen, with conscientious or religious scruples against bearing arms, to nevertheless bear arms in time of war" (R. 42). This is the crux of the case.

POINT III.

Congress has never provided that an alien must be willing as a condition of naturalization to promise in advance to bear arms in any and all future wars even against his conscientious religious scruples.

As general requirements, Congress has provided that an applicant for naturalization must declare on oath in open court that "he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same" (U. S. C. Title 8, Sec. 381), and that "it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that * * * he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same" (U. S. C. Title 8, Sec. 382).

Furthermore, Congress has at various times specifically legislated on the admissibility of certain aliens. It has declared the exclusion of Chinese, persons who disbelieve in or are opposed to organized government, polygamists, aliens who cannot speak the English language, and subjects of neutral countries who withdrew during the World War their intention to become citizens of the United States (U. S. C. Title 8, Secs. 363-366). But Congress has never provided that aliens with conscientious religious scruples against bearing arms must be excluded.

The sole provision of statute applicable to this case is the requirement that the respondent should be "attached to the principles of the Constitution" and that he should declare his willingness to support and defend it against all enemies. That this requirement includes, in a proper case, an expres-

sion of willingness to defend the Government by force of arms is undisputed. But there is no requirement of statute that an applicant having conscientious religious scruples against bearing arms either in some particular war (such as this applicant) or in all wars (as would be the case, for example, with any conscientious Quaker) should promise in advance to abandon those scruples and should agree without qualification to bear arms in any and every case.

The Secretary of Labor, whom Congress vested with the power to make rules and regulations necessary for the proper execution of the provisions of the naturalization laws (U. S. C. Title 8, Sec. 356) has recently introduced question 22 in the preliminary form for petition for naturalization (R. 5). Although this Court, in the *Schwimmer* case, apparently approved its insertion, we nevertheless emphasize that that question is merely informative as to whether an applicant is attached to the principles of the Constitution. It has no other purpose. In order to be entitled to naturalization, the respondent is not required by any provision of law to give to that question an unqualified categorical affirmative answer.

As the Circuit Court of Appeals said (R. 42):

> "An inquiry as to whether he will willingly bear arms is a proper inquiry to ascertain where the applicant stands in the test thus laid down by the naturalization law, but it does not follow because the applicant did not answer question No. 22 categorically but qualified his answer by the statements referred to, that he has not complied with the requirements of the naturalization law entitling him to admission. Question 22 is merely informative and necessarily directed to determine whether the applicant is attached to the principles of the Constitution and laws of the United States. It will, of course, be recognized as a duty of the citizen to bear arms in defense of his country, but there is also the well recognized qualification that a person does not lack nationalism or affection for his government, if, by reason of a conscientious religious scruple, he requests being excused from bearing arms."

POINT IV.

The Constitution and laws of the United States do not require that citizens with conscientious religious scruples should bear arms.

A careful study of statutes and constitutions from the earliest Colonial times to the present discloses that it has always been the settled policy of the United States and of the several states to exempt citizens having religious scruples from the duty of bearing arms in violation of those scruples. The authorities upon this point were fully collated in our brief before the Circuit Court of Appeals, and some of them are cited in the opinion of that Court at Record 42-44. Within the limits of this brief, we shall give merely an outline.

The militia statutes of the thirteen Colonies generally allowed a citizen to obtain a substitute or pay a special tax in lieu of rendering personal service, thereby obviating the necessity of special provisions with respect to citizens having religious scruples. In addition, however, the Colonial legislation of New Hampshire, New York, North Carolina, Massachusetts and Virginia specifically exempted Quakers and members of other religious sects having scruples against bearing arms (N. H. 4 Metcalf, 273, 274; Colonial Laws of New York, Vol. 4, p. 17; State Records of North Carolina, Vol. 24, pp. 193 and 358; Acts and Resolves of Mass., 1758-9, Vol. 4, Ch. 3, p. 158; Virginia, 5 Hening, p. 16). Similarly the Draft Acts enacted by the original States to recruit the Continental Army usually provided that a person could either find a substitute or pay a reasonable sum or tax. Furthermore, some of those Acts dealt specifically with persons having scruples (State Records of North Carolina, Vol.

24, p. 156; Penn. Statutes at Large, Vol. 13, p. 41; Virginia, 8 Hening, p. 242). Several of the State Constitutions enacted previous to the adoption of the Federal Constitution granted to such citizens the privilege of not bearing arms. See Constitutions of New Hampshire of 1784, Vermont of 1777, New York of 1777 and Pennsylvania of 1776. (Thorpe, American Charters, etc., Vol. 4, p. 2455, Vol. 6, p. 3740, Vol. 5, p. 2637, Vol. 5, p. 3083, respectively).

Although the Constitution of the United States contains no express provision protecting a citizen with conscientious religious scruples against bearing arms, the ratifications by the original States clearly show that it was considered a privilege under our form of government that such a citizen should not be forced to bear arms (Journals of Congress, Vol. 13, 1787-1789, pp. 174-176, and 185-187). In response to the urgent demand of the States that the more fundamental rights of the people should be expressly protected by the Constitution, Madison, on June 8, 1789, presented to the House a list of amendments including the provision that "no person feligiously scrupulous of bearing arms shall be compelled to render military service in person" (Gales, Annals of Congress, First Congress, Vol. 1, p. 434).

As a result of unavoidable compromise in language and of a desire for brevity, which usually means broad, general terms, the suggestions that the Constitution should expressly protect the "unalienable right to the free exercise of religion, according to the dictates of conscience", "the rights of conscience" and the rights of a "person religiously scrupulous of bearing arms" were merged and incorporated in Article I of the Bill of Rights. Furthermore, it should not be forgotten that Article IX expressly provided that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." The Supreme Judicial Court of New Hampshire in *Hale* v.

Everett, 53 N. H. 9, 60-61, held the rights of conscience to be inalienable. See also Story, Constitution, Vol. 2, Section 1876.

A review of the Federal legislation and Congressional debates in regard to the raising of a militia and the conscription of soldiers further proves that the Constitution and laws of the United States have always recognized that persons having religious scruples against bearing arms need not do so. This is true of the Act of Jan. 21, 1903 (32 Stat. 775), the Act of June 3, 1916 (39 Stat. 197; U. S. C., Title 32, Sections 1 and 3), and the Selective Draft Act of 1917 (40 Stat. 78, U. S. C., Title 50, pp. 167-8). The same principle has been recognized time and again by the statutes and Constitutions of the several states. (See opinion of the Circuit Court of Appeals at R. 42-43). At the present time, so far as we have been able to discover, in all of the states except California, Vermont and Washington, the statutes either provide that all persons exempted by the laws of the United States (which grant a privilege to persons having conscientious religious scruples) are likewise exempted from service in the state militia, or else they declare specifically that persons having conscientious religious scruples shall not be compelled to bear arms. In Vermont such a statutory provision is unnecessary, for the State Constitution grants the same privilege.

In conclusion, we submit that while on the one hand our Constitution gives the Government the right to compel military service from its citizens (*Selective Draft Cases*, 245 U. S. 366), the Constitution and laws of the United States also recognize that alongside this general principle exists an exception—a privilege that persons with conscientious religious scruples need not bear arms.

The decisions of this Court interpreting the First Amendment of the Constitution support our contention. What constitutes "free exercise" of religion cannot be ultimately determined. It is a case where the Court must prick out a line,—here one between conscience and the command of the State.

In *Reynolds* v. *United States*, 98 U. S. 145, which first presented the issue, this Court adopted the test suggested by Jefferson in the act establishing religious freedom in Virginia, namely, that "an overt act against peace and good order" can be prohibited by the State. See also *Davis* v. *Beason*, 133 U. S. 333, 342; *Mormon Church* v. *United States*, 136 U. S. 1, 49-50. Applying this test, we submit that the Circuit Court of Appeals was correct when it said (R. 44):

> "A person's declination to bear arms is not an act against peace and good order, nor contrary to the Constitution and laws of the United States, if such refusal be based upon conscientious scruples against the practice."

In *State* v. *Hutterische Bruder Gemeinde*, 46 S. D. 189; 191 N. W. 635, the Court expressly recognized that our Constitution grants a person with conscientious religious scruples the privilege of not being forced to bear arms. We have found no cases excluding such persons from naturalization.

POINT V.

A promise to forego a privilege enjoyed by a native born citizen under the Constitution and laws of the United States cannot be exacted of an alien as a condition of his naturalization.

While it is true that there are two classes of citizens, native born and naturalized, nevertheless a naturalized citizen enjoys all the privileges of a native born citizen with the sole exception of eligibility to the office of President.

Osborn v. *United States Bank*, 9 Wheat. 738, 827;
Elk v. *Wilkins*, 112 U. S. 94, 101;
Luria v. *United States*, 231 U. S. 9.

It is a current conception that the naturalization of an alien is the granting of a privilege. The brief of the Government in support of its petition reiterates this idea (p. 11). Yet once Congress has prescribed the terms and conditions which an alien must satisfy in order to become a citizen, the alien has a right of which no court can deprive him. A court, in passing upon a petition for naturalization, "does not confer or withhold a favor."

Tutun v. *United States*, 270 U. S. 568, 578.

In refusing to give a blanket promise to bear arms in some indefinite future war from which his conscience dictated by the will of God may urge him to refrain, the respondent is not demanding a privilege or a favored position not enjoyed under our Constitution. This an alien cannot ask. On the other hand, we submit that Congress cannot exact from an alien at the time of his naturalization a promise that he will forego a privilege granted by the Constitution and laws of the United States. The power of Congress in dealing with naturalization is not unshackled.

Osborn v. *United States Bank*, 9 Wheat. 738, 827;
United States v. *Wong Kim Ark*, 169 U. S. 649, 703;
Downes v. *Bidwell*, 182 U. S. 244, 289;
Pollock v. *Farmers' Loan and Trust Company*, 157 U. S. 429.

To demand from an alien who desires to be naturalized an unqualified promise to bear arms in every war that may be declared, despite the fact that he may have conscientious religious scruples against doing so in some hypothetical future case, would mean that such an alien would come into

our citizenry on an unequal footing with the native born, and that he would be forced, as the price of citizenship, to forego a privilege enjoyed by others. That is the manifest result of the established principle of our Constitution, zealously guarded by our laws, that a citizen cannot be forced and need not bear arms in a war if he has conscientious religious scruples against doing so.

That such a demand would be improper becomes apparent from a consideration of other situations. For instance, Congress would be clearly violating provisions of the Constitution if, in providing for a uniform rule of naturalization, it should require an alien to promise that once he becomes a citizen he will not be entitled to the privilege of holding political office or to the right of free speech or to the right to be secure against unreasonable searches and seizures, or to the protection of the due-process clause.

We fail to understand the statement of the Government (Brief, p. 14) that the principal enunciated by the Circuit Court of Appeals that no more is demanded of an alien who becomes a citizen than of a native born citizen is an irrelevant consideration. As we have pointed out, to allow the contention of the Government would give rise to two classes of citizens having unequal status and unequal privileges before the law. We submit that our Constitution does not contemplate or permit the creation and existence of such classes of citizens, enjoying different rights and privileges and subject to different duties and obligations.

CONCLUSION.

Under the circumstances of this case, we submit that it is idle for the Government to argue that the decision of the Circuit Court of Appeals in any way conflicts with the decision of this court in the *Schwimmer* case, or to urge (Petition, p. 7) that "because of the large alien population residing in the Second Circuit," the decision in the respond-

ent's case has opened the door to the admission of great numbers of undesirable citizens. On the contrary, that decision has prevented closing the door in the face of so desirable a citizen as this respondent.

This is an exceptional case, turns upon its own peculiar facts, and has no relation to the "large alien population residing in the Second Circuit." The respondent, with commendable frankness, took great pains to set forth to the Naturalization Examiner and to the District Court his views as to the religious duty of a law-abiding Christian clergyman when confronted with a hypothetical conflict between his conscience and the demands of the State. We believe that any conscientious Christian, when confronted with the same problem, would give the same answer. The respondent's only fault (if it can be called such) is to be found in his scrupulous anxiety to make his position clear in advance, and in his desire to avoid even the shadow of equivocation or mental reservation in taking the oath. If he has been guilty of any offence, it is the offence of openly expressing his convictions where others, less discriminating and less sincere, would have remained silent. To deny him citizenship would serve only to place a premium upon intellectual dishonesty.

It is therefore respectfully submitted that the decision of the Circuit Court of Appeals was correct, and that the case is not one calling for the exercise by this Court of its supervisory power. The writ of certiorari should be denied.

Respectfully submitted,

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